

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF
MASSACHUSETTS,

Plaintiff,

and

AQUINNAH/GAY HEAD
COMMUNITY ASSOCIATION, INC.
(AGHCA) and TOWN OF AQUINNAH,

Intervenor-Plaintiffs,

vs.

THE WAMPANOAG TRIBE OF GAY
HEAD (AQUINNAH), THE
WAMPANOAG TRIBAL COUNCIL
OF GAY HEAD, INC., and THE
AQUINNAH WAMPANOAG GAMING
CORPORATION,

Defendants.

CASE NO: 1:13-cv-13286-FDS

[Formerly Supreme Judicial Court for Suffolk
County, Massachusetts, CIVIL ACTION NO.
2013-0479]

**DEFENDANTS' RULE 12(B)(1)
AND 12(B)(7) MOTION TO
DISMISS INTERVENOR
AGHCA'S COMPLAINT FOR
LACK OF EFFECTIVE WAIVER
OF TRIBAL SOVEREIGN
IMMUNITY AND FAILURE TO
STATE A CLAIM.**

**DEFENDANTS' RULE 12(B) MOTION TO DISMISS INTERVENOR AGHCA'S
COMPLAINT FOR LACK OF EFFECTIVE WAIVER OF TRIBAL SOVEREIGN
IMMUNITY AND FAILURE TO STATE A CLAIM.**

Defendants¹ Wampanoag Tribe of Gay Head (Aquinnah) and the Aquinnah Wampanoag Gaming Corporation ("Defendants" or "Tribe") hereby move this Court pursuant to Fed.R.Civ.P. 12(b)(1) and Fed.R.Civ.P 12(b)(7) for an Order Dismissing the Complaint filed by

¹ Although Plaintiff and Intervenors also named the Wampanoag Tribal Council of Gay Head, Inc. as a party defendant, alleging that Defendant Wampanoag Tribe of Gay Head (Aquinnah) "includes" Wampanoag Tribal Council of Gay Head, Inc., which no longer exists, Defendants deny that allegation, but if such allegation is true, and Defendant Wampanoag Tribe of Gay Head (Aquinnah) has the capacity for pleading on behalf of Wampanoag Tribal Council of Gay Head, Inc., then this Motion shall also be considered to be filed on behalf of Wampanoag Tribal Council of Gay Head, Inc.

Plaintiff-Intervenor Aquinnah/Gay Head Community Association, Inc. (“the AGHCA”) (DK# 53)² for lack of an effective waiver of Tribal Sovereign immunity and failure to state a claim. Pursuant to Local Rule 7.1(b)(1), the grounds for Defendants’ motion are set forth with specificity in the Memorandum of Points and Authorities filed herewith.

DATED: August 27, 2014

Respectfully Submitted,

/s/ Scott Crowell
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Attorneys for Proposed Defendants

² By separate motion, filed simultaneously herewith, Defendants are filing a Motion to Dismiss all of the Complaints filed by the Commonwealth, Intervenor Plaintiff Town of Aquinnah and Intervenor Plaintiff AGHCA, with leave to amend for failure to join a required party.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

Undersigned counsel certifies that, pursuant to Local Rule 7.1(a)(2), he has conferred with counsel for the other parties to this action in a good faith effort to resolve or narrow the issue presented by this motion.

Dated: August 27, 2014

/s/ Scott Crowell
SCOTT CROWELL

CERTIFICATE OF SERVICE

I, Scott Crowell, hereby certify that the MOTION TO DISMISS AGHCA'S COMPLAINT FOR LACK OF JURISDICTION was filed through the ECF System and therefore copies will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF); paper copies will be sent, via first-class mail, to those indicated as non-registered participants.

Dated: August 27, 2014

/s/ Scott Crowell
SCOTT CROWELL